

1 MS. POLIVY: At the hearing I have no objection.
2 I don't understand what discovery sequestration is supposed
3 to entail. Any principals can always be present at
4 depositions.

5 JUDGE CHACHKIN: Well, you're entitled to have a
6 principal present but it doesn't mean other witnesses -- and
7 the way to avoid that is to have that principal deposed
8 initially so that that problem is avoided.

9 MR. BLOCK: Your Honor.

10 JUDGE CHACHKIN: Yes.

11 MR. BLOCK: The sequestration issue is also --
12 revolves in part around the question of disqualification and
13 witness proposed -- potential role of Ms. Polivy as a
14 witness.

15 But, you know, once again, that's just -- make
16 sure that's on the agenda.

17 MR. COLE: Yeah, I say it may be premature, but at
18 least I wanted to make sure we're moving in that direction
19 and we all understand that's --

20 JUDGE CHACHKIN: Yes.

21 MS. POLIVY: Well, Your Honor --

22 MR. DZIEDZIC: Have you ruled, Your Honor?

23 JUDGE CHACHKIN: Have I ruled on what?

24 MS. POLIVY: There's nothing to rule on at this
25 point.

1 JUDGE CHACHKIN: Well, I will require
2 sequestration of witnesses to the extent of which is
3 permissible. Obviously the recognition that if a party is
4 entitled to be present at the taking of depositions, but
5 procedures can be then implemented which would have that
6 particular individual deposed first so that sequestration
7 will be maintained.

8 And thereafter that party will be able to be
9 present at any further depositions.

10 MR. SILBERMAN: May I ask Your Honor -- does Mr.
11 Dziedzic intend to object to this as far as his named
12 witnesses are concerned, his Bureau people?

13 MR. DZIEDZIC: Well, I'm just trying to find out
14 exactly who's being sequestered here. It does seem
15 premature to sequester the witnesses before we know who all
16 they are.

17 JUDGE CHACHKIN: Well, regardless of who they are,
18 it seems to me a reasonable process in order to make sure
19 that there's no question that they may be influenced by
20 someone else's testimony that they each testify -- that no
21 one be present when they're deposed.

22 MR. DZIEDZIC: From your statement, I'm to assume
23 that Mr. Stewart, Ms. Kreisman and Mr. Pendarvis are
24 included in that grouping in your ruling today that they are
25 subject to an order of sequestration?

1 JUDGE CHACHKIN: If they're deposed, I would treat
2 them as any other deponents.

3 MR. DZIEDZIC: I guess my concern would be the
4 extent -- are you ruling today that from this moment forward
5 every person who is a potential witness in this case --

6 JUDGE CHACHKIN: I am not ruling. I'm saying
7 insofar as formal depositions are concerned and the hearing
8 itself, I will require sequestration of the witnesses. I'm
9 not saying --

10 MR. DZIEDZIC: Fine.

11 MS. POLIVY: At what time, Your Honor?

12 JUDGE CHACHKIN: Pardon me?

13 MS. POLIVY: For the depositions you said?

14 JUDGE CHACHKIN: When the depositions are taken.
15 If and when depositions are taken --

16 MR. DZIEDZIC: The date of the deposition?

17 JUDGE CHACHKIN: The date of the deposition.

18 MR. DZIEDZIC: Thank you, Your Honor.

19 MR. COLE: And finally, Your Honor, this is -- I'd
20 like to try to short circuit one element of discovery, if I
21 could, by asking Ms. Polivy if she could provide me with the
22 names and addresses of all the principals of her client.
23 I've been unable to locate them in the Commission's files or
24 elsewhere, and I think it would assist immeasurably in
25 expediting my preparation of discovery.

1 JUDGE CHACHKIN: Ms. Polivy.

2 MS. POLIVY: Your Honor, ownership report is on
3 file with the Commission. I have supplied Mr. Cole with a
4 copy of it in the past.

5 MR. COLE: She did not include a listing of the
6 limited partners, Your Honor.

7 JUDGE CHACHKIN: Does that include a listing of
8 the limited partners, Ms. Polivy?

9 MS. POLIVY: No, Your Honor. They're not
10 principals.

11 JUDGE CHACHKIN: Well, in any event, you can
12 supply him with the names and we can argue later on whether
13 or not they should be deposed --

14 MS. POLIVY: Your Honor, I don't -- I am not
15 willing to simply say that he's entitled to the names and
16 addresses of the limited partners.

17 JUDGE CHACHKIN: I'm directing you, Ms. Polivy, to
18 supply their names. We could argue later on whether they
19 should be called -- whether you object to their depositions,
20 but it's certainly not too much to ask you for the names of
21 them.

22 MS. POLIVY: But what relevance do they have, Your
23 Honor? They are not --

24 JUDGE CHACHKIN: We'll find out what relevance
25 they have. But we're not at that stage yet.

1 MS. POLIVY: Then I think, Your Honor, it should
2 await --

3 JUDGE CHACHKIN: No. I am directing you to supply
4 the names of all principals. I don't think we have to have
5 much argument on that. We could argue about relevancy at
6 some later time, but certainly he can't go forward unless he
7 has their names.

8 MR. COLE: The principals includes limited
9 partners, Your Honor, just for the sake of clarification.
10 Is that correct?

11 JUDGE CHACHKIN: Yes.

12 MR. COLE: Thank you.

13 JUDGE CHACHKIN: I hope we don't have bickering
14 along the lines like that, supplying names of individuals.

15 MR. SILBERMAN: And that includes addresses?

16 JUDGE CHACHKIN: Yes.

17 MR. SILBERMAN: Good. Thank you, Your Honor.

18 JUDGE CHACHKIN: Now, as far as a notice to take
19 depositions of individuals who are not connected with the ex
20 parte issue, where do we stand there as far as discovery
21 with respect to non-ex parte issue. We don't have to be
22 concerned with Freedom of Information requests. Why can't
23 we proceed with those areas? Why are we waiting until
24 February 26th to what have you? Is there some reason why
25 you can't proceed to take notice -- take depositions?

1 Certainly insofar as documents at this time. What is the
2 reason for any hang up there?

3 Mr. Cole, are you ready to proceed with notices?

4 MR. COLE: One reason, Your Honor, is the point I
5 just raised. I don't have all the information about who the
6 principals are.

7 JUDGE CHACHKIN: All right. Well, assuming --

8 MR. COLE: Yes, I would be prepared to proceed
9 with discovery within, say, two weeks.

10 JUDGE CHACHKIN: All right.

11 MR. COLE: Two weeks would put us --

12 JUDGE CHACHKIN: February 12th I think.

13 MR. COLE: Could I have until the 15th? Would
14 that be possible?

15 JUDGE CHACHKIN: All right. February 15th will be
16 then notices to take depositions of any non-ex parte issue
17 witnesses.

18 MR. COLE: And, Your Honor, I assume there will be
19 some overlap of ex parte and non-ex parte witnesses.

20 JUDGE CHACHKIN: Yes.

21 MR. COLE: Can we defer all witnesses who might be
22 taken --

23 MS. POLIVY: Your Honor --

24 MR. COLE: -- on the ex parte issue?

25 MS. POLIVY: I'm sorry.

1 MR. COLE: May we defer ex parte witnesses -- all
2 testimony of any ex parte witness whether it's with respect
3 to the ex parte issue and the non-ex parte issue until
4 after -- as part of the ex parte process so that we don't
5 have to call people twice?

6 MS. POLIVY: Well, Your Honor, I would prefer -- I
7 mean if it's our witnesses that he's calling, if he's going
8 to do one issue, that he do it and not try to have an
9 overlap --

10 Did I understand you correctly? You said that
11 documents for discovery on issues 2 through 5, requests have
12 to be made by February 12th?

13 JUDGE CHACKIN: No, no. As far as I'm concerned,
14 insofar as we're not dealing with the staff and Freedom of
15 Information Act requests, there's no reason for the rest of
16 discovery, whether it's ex parte or non-ex parte, not to go
17 forward.

18 MR. COLE: That's correct, Your Honor.

19 JUDGE CHACKIN: And so I don't see any reason
20 that notice to take depositions should not include all non-
21 FCC employee witnesses that we could deal with.

22 MR. COLE: Your Honor, I agree with you, although
23 the one caveat I would put in would be the understanding
24 that the parties all along have been that we would try to
25 get documents first. And then --

1 JUDGE CHACHKIN: Well, I have no objection to even
2 proceeding that way, but let's at least proceed with the
3 non-FCC employee situation.

4 MR. COLE: In that case, could I propose that any
5 motions to produce documents with respect to the non-ex
6 parte issues --

7 JUDGE CHACHKIN: Well, even the ex parte issues.

8 MR. COLE: Insofar as --

9 JUDGE CHACHKIN: It doesn't involve --

10 MR. COLE: Insofar as the non-FCC issues -- that
11 non-FCC personnel issues are concerned --

12 JUDGE CHACHKIN: That's correct.

13 MR. COLE: -- be submitted by February 15 and then
14 depending on when those documents are actually produced, we
15 proceed with depositions with notices to depose thereafter.

16 JUDGE CHACHKIN: All right. By February 26th I'll
17 have some idea as to what's taken place as far as documents
18 and any objections, so at that date we can come up with a
19 date for notice to take depositions. Agree on a date.

20 But at least motions to produce have to be filed
21 by February 15th.

22 MR. COLE: Yes.

23 JUDGE CHACHKIN: And admissions have to be filed
24 by February 12th.

25 MS. POLIVY: I thought you said the 26th, Your

1 Honor.

2 JUDGE CHACHKIN: Oh, I'm sorry. February 26th,
3 admissions. Oh, I mean the Freedom of Information --

4 MR. COLE: Right.

5 JUDGE CHACHKIN: -- has to be filed by February
6 12th.

7 MS. POLIVY: Well, Your Honor, could we make that
8 the 15th also?

9 JUDGE CHACHKIN: All right. We'll make that the
10 15th.

11 MR. COLE: And can we have a date by which Ms.
12 Polivy will provide me with the names and address of her
13 principals?

14 MS. POLIVY: Your Honor, I don't have them. I'll
15 have to request them from my client. I'll get them as
16 expeditiously as possible.

17 MR. COLE: Can we have a deadline for that?

18 MS. POLIVY: Well, Your Honor, I will give them to
19 you as soon as I get them.

20 JUDGE CHACHKIN: Ms. Polivy has said she will move
21 expeditiously on it. I think that's sufficient.

22 All right. Freedom of Information requests is
23 February 15th. Motion to produce is February 15th. The
24 filing of any admissions is February 26th. And at February
25 26th we will also have a further conference to see where we

1 are at that time and establish dates.

2 Anything further?

3 MR. COLE: No, Your Honor.

4 JUDGE CHACHKIN: All right. Thank you.

5 MR. COLE: Thank you, Your Honor.

6 MR. SILBERMAN: Thank you, Your Honor.

7 (Whereupon, at 11:45 a.m., the hearing was
8 concluded.)

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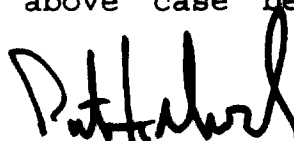
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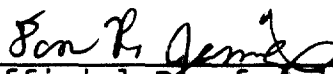
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